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June 16, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Permitted *Ex Parte* Contact, CS Dkt No. 00-2
(Implementation of the Satellite Home Viewer Act of 1999)

Dear Ms. Salas:

This letter constitutes a permitted written *ex parte* contact in the above-referenced proceeding. This letter supplements TV Guide's comments and reply comments concerning the adoption of program exclusivity rules under the Satellite Home Viewer Improvement Act.

Summary

The C-band industry should be exempt from any program exclusivity rules that may be adopted in this proceeding. Alternatively, the Commission should commence a new proceeding to evaluate the need for any rules governing program distribution to C-band dishes. In any event, only limited sports blackout rules could be reasonably applied in individual markets for those superstations and network stations delivered by C-band carriers.

Discussion

As set forth in TV Guide's Comments (dated February 7, 2000), it was clear that Congress distinguished DBS service from C-band services and intended that C-band carriers would be exempt from any restrictive rules limiting the distribution of programming to C-band subscribers. Also, because any rules the Commission might adopt would be similar to those for cable systems, the C-band industry's small size and declining subscriber base merited a "small

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system” exemption as well.¹ For TV Guide’s superstation and network stations, the weighted average number of subscribers per “community unit” is less than 6. Accordingly, C-band carriers qualify for the “small system” exemption, as would competing small cable operators.²

The C-band industry’s contraction from a peak of 2.4 million subscribers in 1995 to 1.5 million currently, eliminates the need for any rules, as a percentage of subscribers in any particular market are sufficiently small that the implementation of the rules provide minimal protection. Also, as set forth in TV Guide’s comments and reply comments, Congress’ determination to grandfather existing C-band subscribers, as well as those whose services had been terminated prior to October 31, 1999, merits the complete exemption from network nonduplication rules.³ No party even addressed the C-band industry in the comments, but instead focused on DBS. Accordingly, the interest in burdening the C-band industry with new rules is not justified, as the program owners themselves have shown minimal interest in restricting programs delivered to C-band dishes.

The one potential exception is sports. Because sports blackout rules apply to a limited number of games, oftentimes scheduled months in advance, and apply to only the home market of a particular team, rather than the thousands of television stations and all the television markets that could be affected by syndex or network non-duplication, it would be possible for the C-band industry to comply if carriers are provided with a detailed advance notice of blackout requests for all games and for all teams in a particular sports league. In the event a game is broadcast locally or sold out, then individual teams should fax or e-mail the retraction of the blackout request directly to the carrier.

Also, due to the “rough cut” of using a 35-mile radius measured against zip-codes, the radius could be reduced to 30 miles so that zip codes are not over-included in any blackout request. Better yet, the Commission should delay the application of any satellite exclusivity rules to the C-band industry while it seeks further comments regarding how these rules could be made to apply to the C-band industry in a rulemaking designed specifically for that purpose. Otherwise, it is likely that the C-band industry will lose programming and a source of competition will be eliminated. Those who have stuck by their C-band systems in the face of the marketing efforts of the DBS companies obviously prefer their large dishes despite the expense of maintaining a larger dish. Accordingly, denying C-band subscribers’ programming choices would only frustrate those subscribers’ needs without providing them a reasonable alternative except to abandon their C-band dishes.

¹ Current FCC rules for network non-duplication, syndex and sports blackout all provide exemptions for cable operators with less than 1,000 subscribers within their system/community unit. *See, e.g.*, 47 C.F.R. §§ 76.67(f)(sports blackout); 76.95(a)(Network non-duplication); and 76.156(b)(syndex).

² SMATV and MMDS operators are also exempt from the exclusivity rules regardless of their size.

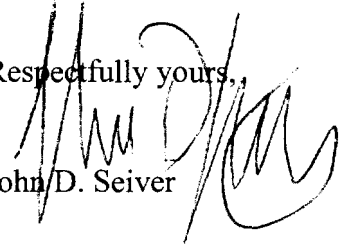
³ 145 Cong. Rec. S14988 (Daily ed. Nov. 19, 1999).

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If you have any questions, please do not hesitate to contact the undersigned.

Respectfully yours,

John D. Seiver

A handwritten signature in black ink, appearing to read 'John D. Seiver', is written over the typed name. The signature is stylized with a large, sweeping 'J' and 'S'.

Enclosure

cc: William Johnson (all w/o encl.)
Eloise Gore
Ronald Parver
Jonathan Levy
Treg Tremont
Steven Broeckaert
Michael Lance
Deborah Klein
Ben Golant
Phil Hochberg

EXHIBIT A

Analysis of Superstation Carriage in the "Big-Four Sports" DMA's

DMA	Estimated Universe Subscribers per DMA						Community Units	Average Subs per Community Unit					
	Total	WGN	WPIX	KTLA	KWGN	WWOR		Total	WGN	WPIX	KTLA	KWGN	WWOR
Atlanta	3,837	2,448	985	1,370	308	395	134	28.6	18.3	7.3	10.2	2.3	2.9
Baltimore	1,163	779	259	339	168	72	164	7.1	4.7	1.6	2.1	1.0	0.4
Boston	812	436	187	241	56	66	412	2.0	1.1	0.5	0.6	0.1	0.2
Buffalo	2,009	1,311	494	689	249	167	280	7.2	4.7	1.8	2.5	0.9	0.6
Charlotte	6,107	4,392	1,942	2,645	414	538	250	24.4	17.6	7.8	10.6	1.7	2.2
Chicago	2,321	1,492	556	779	304	208	648	3.6	2.3	0.9	1.2	0.5	0.3
Cincinnati	2,178	1,562	521	716	211	160	469	4.6	3.3	1.1	1.5	0.4	0.3
Cleveland	2,345	1,548	441	629	277	211	584	4.0	2.6	0.8	1.1	0.5	0.4
Columbus	2,079	1,533	492	691	274	163	547	3.8	2.8	0.9	1.3	0.5	0.3
Dallas	7,556	4,803	1,694	2,375	892	612	462	16.4	10.4	3.7	5.1	1.9	1.3
Denver	7,293	5,034	915	1,361	3,269	316	417	17.5	12.1	2.2	3.3	7.8	0.8
Detroit	1,587	967	356	496	140	145	384	4.1	2.5	0.9	1.3	0.4	0.4
Green Bay	1,737	1,121	387	548	130	123	250	6.9	4.5	1.5	2.2	0.5	0.5
Houston	3,216	2,177	746	1,052	433	230	542	5.9	4.0	1.4	1.9	0.8	0.4
Indianapolis	6,922	4,764	1,641	2,286	731	623	479	14.5	9.9	3.4	4.8	1.5	1.3
Jacksonville	1,842	1,311	541	750	175	173	111	16.6	11.8	4.9	6.8	1.6	1.6
Kansas City	2,659	1,816	615	846	335	228	190	14.0	9.6	3.2	4.5	1.8	1.2
Los Angeles	7,181	3,790	1,332	2,191	1,452	584	609	11.8	6.2	2.2	3.6	2.4	1.0
Miami	1,410	769	323	429	133	138	148	9.5	5.2	2.2	2.9	0.9	0.9
Milwaukee	478	270	94	134	49	33	233	2.0	1.2	0.4	0.6	0.2	0.1
Minneapolis	3,403	2,326	793	1,095	457	202	688	4.9	3.4	1.2	1.6	0.7	0.3
Nashville	8,538	6,230	2,362	3,304	821	707	302	28.3	20.6	7.8	10.9	2.7	2.3
New Orleans	1,095	715	266	366	124	90	49	22.3	14.6	5.4	7.5	2.5	1.8
New York	1,142	590	246	341	99	99	858	1.3	0.7	0.3	0.4	0.1	0.1
Orlando	2,371	1,436	592	832	202	248	261	9.1	5.5	2.3	3.2	0.8	0.9
Philadelphia	894	538	218	313	83	105	786	1.1	0.7	0.3	0.4	0.1	0.1
Phoenix	3,030	1,926	592	905	690	208	278	10.9	6.9	2.1	3.3	2.5	0.7
Pittsburgh	2,272	1,490	520	727	268	228	878	2.6	1.7	0.6	0.8	0.3	0.3
Portland	6,084	3,859	942	1,429	1,518	406	306	19.9	12.6	3.1	4.7	5.0	1.3
Raleigh	5,754	4,020	1,552	2,114	430	511	256	22.5	15.7	6.1	8.3	1.7	2.0
Sacramento	2,165	1,233	373	532	454	140	221	9.8	5.6	1.7	2.4	2.1	0.6
Salt Lake City	2,000	1,259	321	475	476	165	285	7.0	4.4	1.1	1.7	1.7	0.6
San Antonio	2,531	1,570	482	686	421	193	158	16.0	9.9	3.0	4.3	2.7	1.2
San Diego	1,170	607	224	364	257	110	80	14.6	7.6	2.8	4.6	3.2	1.4
San Francisco	1,754	933	268	398	470	101	320	5.5	2.9	0.8	1.2	1.5	0.3
Seattle	4,257	2,631	680	1,046	1,144	310	360	11.8	7.3	1.9	2.9	3.2	0.9
St. Louis	3,532	2,490	1,046	1,457	352	327	428	8.3	5.8	2.4	3.4	0.8	0.8
Tampa Bay	1,743	1,085	418	580	136	193	263	6.6	4.1	1.6	2.2	0.5	0.7
Washington DC	2,771	1,823	769	1,052	257	211	372	7.4	4.9	2.1	2.8	0.7	0.6
Total/Weighted Avg	121,238	79,085	27,189	38,582	18,661	9,736	14,462	5.5	1.9	2.7	1.3	0.7	-